(Testimony of C. V. Peterson.)

The Court: Accounted to whom? [2222]

The Witness: The War Shipping Administration.

Mr. Pratt: That is all.

Cross Examination

Mr. Faulkner: Q. Mr. Peterson, in other words, isn't this correct, that there was a contract in writing between the Hammond Shipping Company and the War Shipping Administration relating to creating your company as a general agent, isn't that correct? A. Yes.

Q. There was nothing new in the shipping business in respect to that change. It was something that had been done for many, many years—creating a shipping company an agent for another company at a particular port, isn't that right?

A. This contract was purely a Government and a shipping company contract. It is quite different, I would say, than the normal.

Q. I do not mean the terms of the contract, but I mean in the shipping business an owner of a ship delegates certain people to act as agent for that ship throughout the world, isn't that right?

A. Yes, that is true.

Q. Now a ship comes into being. It becomes then the subject matter of an agency in which your company was made a general agent for that ship under a written contract with the War Shipping Administration, isn't that right? A. Yes.

Q. Now, in order to carry on that change the

(Testimony of C. V. Peterson.)

War Shipping Administration provided you at the inception of that agreement with certain moneys, isn't that right?

A. We established a fund. [2223]

Q. They establish a fund?

A. They establish a fund, yes.

Q. Although the money was established by the Government, by the War Shipping Administration, it is a fact, is it not, that from then on you were responsible for that fund to the War Shipping Administration, isn't that right?

A. Yes, we were responsible.

Q. And you put up a bond under your contract for the faithful performance of your custody of that fund, isn't that right?

A. And I believe other obligations under the general agency agreement.

Q. It required you to put up a bond, did it not?

A. I believe $50,000.

Q. As the funds were disbursed by you, you disbursed them in the same manner under that contract as you had done before under a general agency arrangement, isn't that right, where your agency embraced the victualling and supplying of a ship?

A. Under Government restrictions I would say there is a difference in the manner of handling it.

Q. For instance, after a fund had been created for the Hammond Shipping Company, and you drew on that fund in order for your company to get credit from the War Shipping Administration

(Testimony of C. V. Peterson.)

you had to present a claim against the War Shipping Administration setting forth all the items of the expenditure, isn't that correct?

A. I do not know whether the word "claim" is right. [2224] We gave them a list—we usually give them a listing of everything disbursed and on hand.

Q. And that list was supplied them for the purpose of receiving that money back, was it not?

A. Well, occasionally the reimbursement is not exactly the same as the listing.

Q. But to keep the fund at a level, when you presented your list of expenditures with the request that they approve them, they then provide you with funds in an amount similar to the amount that was covered on your lists, isn't that right?

A. It does not always work that way. There are occasions when these are credited to the revolving fund and special lump sums are paid over or carried over.

Q. In order for you to get any credit for any money that you disburse out of this fund it is true, is it not, that you had to secure the approval of the War Shipping Administration of your disbursement of moneys that had theretofore been received?

A. Yes.

Q. And without that you would not get the credit, isn't that correct?

A. Without proper——

Q. Without their approval?

A. Without their approval, no doubt.

Q. And you submitted——

(Testimony of C. V. Peterson.)

Mr. Pratt: He did not finish his answer.

Mr. Faulkner: Q. Go right ahead.

A. The approval is based on the list of expenditures supported [2225] by the invoices.

Q. By the invoices?

A. The invoices being paid out of the fund. That is the basis of our report to them, and they in turn reimburse us in whole or in part. That is just a matter of business operation and we approved it.

Q. And invoices such as Government's Exhibit 169 would be the type of invoice that would be tendered to the War Shipping Administration to support your claim for reimbursement, isn't that correct?

Mr. Pratt: I object to that, because he is not testifying it was a claim for reimbursement. It is a claim to reestablish or to bring the fund up to a certain level. Counsel misquotes his testimony in calling it reimbursement.

Mr. Faulkner: I do not mean to misquote his testimony. I think the procedure is pretty clear for Mr. Peterson.

The Witness: You are on a technicality there—maybe both of you. They bill the War Shipping Administration, and we are merely, you might say, agents disbursing their business for them.

Q. I understand that, but the point is, Mr. Peterson, can there be any question about this at all, that in your relations as general agent with the War Shipping Administration that you assemble

(Testimony of C. V. Peterson.)

and make available to their auditors the supporting information to support your claims for money which you have made from time to time to rehabilitate that fund? [2226]

A. We furnish the War Shipping all that information.

Q. Yes, and part of the data that was furnished by your company to the War Shipping Administration was a certificate of an employee of the Hammond Shipping Company to the effect that, "I certify that the services above specified have been performed or the articles in quantity and quality above specified have been delivered to the vessel in good condition," isn't that correct? That is required on your invoices, isn't it?

A. That is the War Shipping Administration requirement.

Q. Yes. In other words, before your accounts are approved, your company itself must certify to the War Shipping Administration that the goods covered by the invoice were received in quality and quantity as specified in the invoice?

A. Let us put it this way, that the employees of the War Shipping Administration normally approve these, that is, either the master or the steward, and we in turn as agents calculate that we have the necessary approvals on them based on the War Shipping Administration's instructions of just how we are to do it. Our approval won't get the money, if that is what you mean.

Q. Your approval?

(Testimony of C. V. Peterson.)

A. Hammond Shipping Company's approval won't get the money.

Q. And without some approval that you furnish them you do not get the money, do you?

A. That is right.

Q. Isn't that right? A. That is right.

Q. And part of the approval is a certificate of the receipt of the goods by an employee of the Hammond Shipping Company?

A. That is a normal procedure.

Q. And then in regular course the bill is paid, isn't that right? A. That is right.

Q. I mean your bill or your account is settled. We will put it that way. In normal course the account that you rendered to the War Shipping Administration is approved and paid—or is approved, at all events. Withdraw it, your Honor, because I do not want to——

The Witness: As to those records, they really are not ours.

Q. I appreciate it.

A. We have a copy of them, you might say, to carry out our part of the agreement.

Mr. Faulkner: I have gone through this many times, your Honor, with other clients who have dealt with the Maritime Commission.

Q. In other words, Mr. Peterson, there is an auditing and an approval of your accounts, and no matter what expenditures you have made, if the War Shipping Administration or the Maritime Commission, in the event that they were acting for

(Testimony of C. V. Peterson.)

them, disapprove amounts which you set forth in your account, you do not get credit for those amounts, do you?

A. That is right. They allow us a certain, you might say, method of recovery [2228] under the regulations. It is presumed if we are not reimbursed we are acting under the general agency agreement.

Q. I call your attention to this check dated May 25, 1944, which is in the same amount as the invoice, Exhibit 169. That is the date the check was issued, is it not?

A. That is the date it was made up.

Q. Did you, or, rather, your company receive to your knowledge any instruction or request from any Government agency at all not to pay this invoice, Government's U. S. Exhibit No. 169?

A. Not to my knowledge. I would not know any problems that may have occurred in getting that bill ready for approval, but I do not know.

Q. Do you know whether your company ever received any instructions of any kind from any Government official or agent to decline to accept the merchandise covered or presumably covered by this invoice, U. S. Exhibit No. 169?

A. I wouldn't know that either.

Mr. Faulkner: I think that is all, Mr. Peterson.

Mr. Pratt, may it be stipulated that the invoice shown to the preceding witness, whose name was Babcock, is the invoice which is now in evidence as U. S. Exhibit 169?

(Testimony of C. V. Peterson.)

Mr. Pratt: Certainly.

Redirect Examination

Mr. Pratt: Q. Now, you have said that this invoice ultimately was submitted to the War Shipping Administration [2229] along with other records to support your accounting for Government funds; that is right, is it not?

A. That is right.

The Court: Pardon me. Speak up. The reporter must get your answer down.

The Witness: That is true.

Mr. Pratt: Q. There was no disallowance of this claim, of your claim by the Government in the approval of your accounts, so far as this invoice is concerned, was there?

A. No. If there were there would normally be some reference to it.

Q. And again whatever money you utilized in the payment of this invoice was Government funds, is that right? A. That is my understanding.

Mr. Pratt: That is all.

The Court: Is that all from this witness? Step down.

OSCAR NYSTROM,

called on behalf of the Government; sworn.

The Clerk: Q. Will you state your name?

A. Oscar G. Nystrom.

Direct Examination

Mr. Hippeli: Q. You live in San Francisco, Mr. Nystrom? A. That is right.

Q. Were you ever employed by the defendant firm Nye & Nissen? A. I have been. [2230]

Q. When?

A. From the first of 1944 in January to approximately the 15th of May. I can't state the exact date that I left there.

Q. What were your duties while you were employed at Nye & Nissen?

A. I was a driver there.

Q. A truck driver?

A. That is right.

Q. How many deliveries would you make a day?

A. I would make two or three deliveries down at the waterfront.

Q. Were practically all of your deliveries to the waterfront?

A. Well, I made delieveries to the two stores that they had, one in the Mission and one at the Crystal Palace Market in the morning, and then I usually made two or three deliveries a day down to the waterfront.

Q. To whom would you deliver at the waterfront?

(Testimony of Oscar Nystrom.)

A. I would deliver butter, eggs and cheese.

Q. To whom? Which ships or what customers?

A. The War Shipping Board.

Q. From whom would you receive your orders at the defendants' plant?

A. Mr. Henry Berman.

Q. What did you do down there?

A. Well, I usually received my invoices from Mr. Berman and then he would instruct me on what articles to take out of the plant.

Q. Do you recall delivering any butter?

A. On numerous occasions I have delivered butter.

Q. Where was the butter kept?

A. The butter was kept in the [2231] ice boxes under padlock.

Q. Who would direct you what butter to take under orders?

A. Mr. Goddard.

Mr. Faulkner: We object to this, your Honor, who directed him generally to take butter. That is not in the issues of this case.

The Court: Fix the time and lay the foundation.

Mr. Hippeli: Q. Will you tell us generally what you did down there, Mr. Nystrom?

Mr. Faulkner: We object to that——

The Witness: A. Usually I came——

Mr. Faulkner: Just a moment. It is hearsay as to the defendants and too general a question: generally what he did.

(Testimony of Oscar Nystrom.)

Mr. Hippeli: I am merely attempting to establish what the duties of our witness were.

Mr. Faulkner: He has testified he was running a truck, that he made deliveries to the War Shipping boats, that he made deliveries to the waterfront, and made deliveries to two stores and ran a truck.

The Court: Q. What other duties, if any, did you perform?

A. That is all I did was take care of the deliveries.

The Court: Proceed.

Mr. Hippeli: Q. Do you recall having any conversation with Mr. Berman concerning mixing cases of eggs?

A. I have. [2232]

Q. When was that?

A. Approximately on the 19th of April, 1944.

Q. Where was it?

A. At 17th and Missouri Street at the Nye & Nissen plant.

Q. Who was present at this time?

A. Mr. Berman and myself.

Q. Did you have a connversation at that time?

A. Yes, we did.

Q. What was that conversation?

A. Mr. Berman went up to the office and came down with the invoice saying he had a shipment ready to go down to the Lilly Norton dock at Pier 34, and he specified to me what cases of eggs to take and put on my truck. There was a shipment

(Testimony of Oscar Nystrom.)

of 48 cases in this order, and he ordered me over to take this tray and bring it over to the platform by my truck and load 38 cases of eggs with the Department of Agriculture stamp on them. Then he sent me over to Mr. Goddard to get 10 cases of eggs from him to fill the allotment. So I went over to Mr. Goodard and he specified to me ten cases by his office to take over to my truck, and when I brought these back over to my truck Mr. Berman instructed me to mix these with the other thirty-eight cases.

Q. Did the ten cases of eggs that Mr. Goddard indicated that you should take bear a Department of Agriculture stamp?

A. They did not.

Q. Did they bear any other stamp?

A. They had a large purple "P" stamped on the box.

Q. Then when you returned to your truck you had a lot of 38 [2233] cases bearing the Department of Agriculture stamp and a lot of 10 cases which did not have any stamp?

A. That is right.

Q. Who was present at that place?

A. Mr. Berman.

Q. What was done then?

A. Mr. Berman instructed me to proceed to load my truck, and I loaded my truck, and he told me to mix these ten cases up. While I was putting the thirty-eight cases on, I put approximately six or eight cases or, and then he told me to put one

(Testimony of Oscar Nystrom.)

or two of the others in. Then I proceeded to load a few more on, and then he told me put another one in. After I have done that, he gave me the invoices, that is, approximately four to six copies of the white invoice, that is, with the United States War Shipping Administration signature on the top——

Q. Was "Nye & Nissen" printed at the top of the invoice?

A. That is right.

Q. Did he hand you any other documents?

A. He handed me the customer's invoice, the yellow slip, the pencilled copy.

Q. The first invoice was typewritten?

A. That is right.

A. That is right.

Q. And the second series of documents were written in pencil?

A. That is the customer's copy. That is the yellow slip. It also had Nye & Nissen on the top of the invoice.

Q. And you received this from Mr. Berman?

A. Mr. Berman.

Q. Did he give you any instructions pertaining to the document?

A. He would always instruct me. He would always put whatever [2234] papers he wished to come back to the plant—he would segregate them between the two yellow copies, that is, the one, the carbon copy or the yellow copy would go down to the store or whoever received at the dock, and then

(Testimony of Oscar Nystrom.)

the other invoice—then I would take the original of these other copies and bring them back to him signed. And so after I got that load up, then he gave me the documents and I proceeded——

Mr. Faulkner: Your Honor: there is no question. The witness is just talking.

Mr. Hippeli: Q. What did he do after he gave you the documents?

A. I proceeded down to the Lilly Norton dock at Pier 34 and then I looked for the steward on the boat, but at that time they happened to have a clerk on the dock.

Mr. Faulkner: Is this evidence offered by you against all defendants on all counts?

Mr. Pratt: This is offered on the first count of the indictment so far.

Mr. Hippeli: Q. Will you tell us what you did down at the dock?

A. Then I proceeded to unload the cases, and then after I had unloaded them I had the documents signed which I was to return to the plant.

Q. By whom were the documents signed, do you recall?

A. I came back to the plant——

Q. No, by whom were the documents signed down at the dock? [2235]

A. By the clerk who was receiving the goods.

Q. What did you do then?

A. Then I proceeded back to the plant and gave the receipts to Mr. Berman.

Q. What happened after that?

(Testimony of Oscar Nystrom.)

A. Well, then he says, "In the meantime when you are gone I have another order down here of 48 cases, down at the same dock."

Q. Who told you that?

A. Mr. Berman. "And I want you to get that ready this evening. It has to be delivered the first thing in the morning."

Q. What was done then?

Mr. Faulkner: May I have the time of this?

Mr. Hippeli: The time is April 19, after the truck driver, the witness, returned from the delivery of a load of 48 cases of eggs to the Norton Lilly dock at Pier 34 in San Francisco.

Mr. Faulkner: April 19?

Mr. Hippeli: That is right.

Mr. Faulkner: That is all I want to know.

Mr. Hippeli: Q. And now you have returned back to the Nye & Nissen plant and you have received instructions from Mr. Berman for the preparation of another delivery of 48 cases of eggs, is that right?

A. Yes, at the opposite side of the dock at the same pier.

Q. You and Mr. Berman are present at the Nye & Nissen plant, is that right?

A. That is right.

Q. Was any conversation had at that time?

A. Yes, he [2236] instructed me to prepare for the load.

Q. What instructions did he give you?

A. He instructed me to see Mr. Goddard, and

(Testimony of Oscar Nystrom.)

Mr. Goddard instructed me which case to take—first he asked me to see Ruby about getting the Department of Agriculture stamp—the Department-stamped eggs for shipment down at the Lilly Norton dock, the 48 cases. So I went and seen Mr. Berman—Mr. Goddard.

Q. When you said Ruby you meant Mr. Goddard?

A. Mr. Goddard, that is right. So I seen Mr. Goddard and he instructed me which eggs I should take to fill the order. I got the tray of eggs and brought them over to my truck, and Mr. Berman was standing by with the documents for the shipment. So then I proceeded——

Q. About how many cases were on that tray?

A. Approximately thirty.

Q. And did they bear a Government stamp?

A. That is right.

Q. Were there any other eggs that you received?

A. Then I was instructed by Mr. Goodard to take ten cases over by his office. These had that large letter "P" on them.

Mr. Faulkner: Your Honor, I do not think the witness hears very well. Mr. Hippeli asks one question and he keeps on talking.

The Court: Read the question and answer, Mr. Reporter.

(Record read.)

Mr. Faulkner: He does not hear the question, your Honor. [2237]

The Court: Proceed.

(Testimony of Oscar Nystrom.)

Mr. Hippeli: Q. Will you continue to answer that question, please?

A. Will you ask me that again?

Mr. Hippeli: Will you read the question?

(Question read.)

A. Besides the cases—that allotment of thirty, approximately thirty?

Q. Yes. A. Yes, there were.

Q. From whom did you receive them?

A. I received them from Mr. Goddard.

Q. Did they bear a United States Department of Agriculture stamp?

A. No, they did not.

Q. Did Mr. Goddard give you any instructions as to what you were to do with those cases of eggs?

A. He instructed me to take them to fill up the order on the forty-eight allotment.

Q. Then you have two lots of eggs out near your truck, do you?

A. That is right.

Q. Is Mr. Berman or Mr. Goddard present?

A. Mr. Berman is.

Q. What did you do then?

A. I proceeded to load my truck, and Mr. Berman instructed me to mix these ten cases in with the others.

Q. What happened then?

A. Well, after I had put them in I believe that there was some butter and cheese with that order. I don't believe—I will say definitely there was some

(Testimony of Oscar Nystrom.)

butter, [2238] and cheese with that order." So then after I had loaded that truck he told me that I was supposed to go down the first thing in the morning, so come down a little earlier, and, he staid, "I will see that you get off a little earlier." So I brought the truck fully loaded up to the garage and left it there.

Q. Then where did you go?

A. Then I proceeded on my way home.

Q. And did you hear from Mr. Berman or Mr. Goddard that night?

A. Mr. Berman phoned me that evening approximately six-thirty to seven.

Q. What did he say?

A. He told me to come down to the plant the first thing in the morning, a little earlier. He said, "The Army wants to inspect them eggs before you take them down to the dock."

Q. To which eggs did he refer? Those in the truck or those that had been delivered?

A. Those that were on the truck.

Q. Was anything else said at that time?

A. He instructed me over the phone to come down early in the morning, go up to the garage and bring my truck down to the platform.

Q. What platform?

A. To the Nye & Nissen plant. Then he told me to open the doors there and be ready for the Army men, when they came down to inspect the allotment.

Q. Did he make any reference to cases which

(Testimony of Oscar Nystrom.)

bore a United States Department of Agriculture stamp?

A. When I came down there—when I was there with the truck in the morning at the [2239] platform and I opened the doors, the Army men were not there yet.

Q. Who was there?

A. Mr. Berman and myself.

Q. Was any conversation had at that time?

A. Well, they told me to be careful when I unloaded my truck.

Q. Who told you that?

A. Mr. Berman.

Q. And what did he say?

A. He said, "When you unload your truck, when he indicates for you to take certain cases and he only points in a general direction, you take the ones with the Department of Agriculture stamp on them."

Q. Who would indicate for you to take certain cases? A. The Army men.

Q. Did anyone else arrive after that conversation?

A. Shortly after that the three Army officers arrived.

Q. And what did they do? Was Mr. Berman present at the time they arrived?

A. That is right.

Q. Were you present? A. I was.

Q. Was anybody else there?

A. There was just Mr. Berman and I.

(Testimony of Oscar Nystrom.)

Q. What was done then?

A. The Army officer came over to the truck, looked inside the truck, and indicated to me to take two cases out of this first tier; told me to break down the load. I had three tiers in the truck. I broke down so all three tiers could be reached. So he indicated to me to take two cases from this tier, another case from this tier, and [2240] another case from that, and so forth. I took approximately four to six cases out of the truck.

Q. What was done with them?

A. He took them to the candling room.

Q. Did those cases bear a United States Department of Agriculture stamp?

A. They did.

Q. Were any of those cases unstamped or did any of them bear a purple "P" on them?

A. None of them did.

Q. What were done with the cases that you handed out to the Army men?

A. The other Army officers proceeded to take them over to the candling room.

Q. Then what was done?

A. The eggs were candled and they were okehed.

The Court: We will take a recess for a few minutes.

(Recess.) [2241]

The Court: You may proceed.

Mr. Hippeli: Before the recess you had told us that the Army men candled several cases of eggs

(Testimony of Oscar Nystrom.)

which they took off of your truck. After that, what was done?

A. After they finished candling the cases and O.K.'d them they came back to the truck, brought the other four or six cases back and we nailed them up. Then they stamped all 48 cases with a horseshoe stamp with the Army inspection signifying inside the horseshoe.

Q. They stamped all the cases in your truck?

A. Yes, 48.

Q. Was the truck delivered?

A. Yes. Then I delivered that down to the Norton-Lilly dock about 8:30 that morning.

Q. Did you receive delivery documents to accompany that load? A. That's right.

Q. Do you recall to whom those delivery documents were made out?

A. No, I don't

Q. Were they made out to the War Shipping Administration, if you recall?

Mr. Faulkner: We object to that. When the witness says he does not recall to whom they were made out it is not permissible——

The Court: Objection sustained.

Mr. Hippeli: Q. Did you ever make a delivery to the steamship John Muir? A. I did.

Q. Do you know when you loaded that delivery?

A. I loaded [2242] the delivery for the John Muir on the 24th of April, 1944.

Q. Where did you load this lot?

(Testimony of Oscar Nystrom.)

A. Down at Seventeenth and Missouri Streets, at the Nye & Nissen plant.

Q. Who was present at the time you loaded it?

A. Mr. Berman.

Q. Was Mr. Goddard there?

A. Mr. Goddard was present in the plant.

Q. And you were present, were you not?

A. I was.

Q. What happened at that time?

Mr. Faulkner: We object to that.

The Witness: Henry Berman came over to me with the document——

Mr. Faulkner: Just a minute.

The Court: Wait a minute.

Mr. Faulkner: In other words, when you get to a transaction such as this we are entitled to particularity and not general questions of what happened at that time.

The Court: Lay the foundation.

Mr. Hippeli: Q. At that time and place did you observe Mr. Berman do anything?

A. I observed Mr. Berman with the invoices coming—I don't know just exactly what you mean?

Q. Did you see him with invoices?

A. That's right.

Mr. Hippeli: Can I see U. S. Exhibit 65, please?

Q. I will show you U. S. Exhibit 65, which is a Nye & Nissen invoice calling for the delivery of a certain lot of butter, cheese and eggs to the steamship John Muir, and ask if you [2243] ever saw that document before. A. I have.

(Testimony of Oscar Nystrom.)

Q. Did you see Mr. Berman with that document on the date you have previously testified to?

A. I seen Mr. Berman with a copy, four or six copies of this here identical document coinciding with this, here.

Q. Did Mr. Berman give you Exhibit 65 together with some duplicates of that exhibit?

A. That is right.

Q. At the time Mr. Berman came down with U. S. Exhibit 65, did you receive any instructions from Mr. Berman?

A. I did that.

Q. Did you receive any instruction pertaining to the seven cases of American processed cheese, which is one of the items appearing on Exhibit 65?

A. I did.

Q. What did he tell you to do with respect to the cheese?

A. He instructed me to go to the icebox, and he took me to the icebox, unpadlocked the icebox, and he told me to take seven cases of cheese out of that icebox.

Q. I notice there are two cases of Cheddar cheese. Did Mr. Berman give you any instructions pertaining to the Cheddar cheese?

A. He instructed me to see Mr. Goddard about the Cheddar cheese.

Q. To whom did you report to receive Cheddar cheese? A. To Mr. Goddard.

Q. Was that true on practically all occasions?

A. Practically all occasions on the Cheddar.

(Testimony of Oscar Nystrom.)

Q. Who directed what Cheddar cheese you were to take in the [2244] fulfillment of this particular order? A. Mr. Goddard.

Q. There are 20 *pounds* of butter. Did you recall procuring 20 *pounds* of butter for fulfilling this order?

A. Yes; Mr. Goddard took me to the icebox, unpadlocked the icebox, and instructed the 20 boxes of butter for which I was to take.

Q. Who directed you, who gave you instructions as to what butter to deliver under the purchase orders?

Mr. Faulkner: The witness has never seen any purchase orders.

Mr. Hippeli: I will reframe the question.

Q. Who instructed you as to what butter was to be delivered under invoices——

A. Mr. Berman.

Q. Invoice, U. S. Exhibit 65, also calls for 48 cases, Medium Processed AA eggs. Where were the eggs stacked in this particular case?

A. They were stacked inside the plant.

Q. Did you receive any directions with respect to assembling a lot of 48 cases of eggs which were to be delivered in the invoice, U. S. Exhibit 65?

A. I did.

Q. From whom did you receive those instructions? A. From Mr. Berman.

Q. What did Mr. Berman say?

A. Mr. Berman instructed me——

Mr. Faulkner: Just a minute. Who was pres-

(Testimony of Oscar Nystrom.)

ent? We would like to know who was present at this conversation.

Mr. Hippeli: At the time you received instructions from Mr. Berman with reference to fulfilling the invoice that called [2245] for 48 cases of eggs, was anyone else present?

A. Mr. Goddard.

Q. Was any conversation held at that time?

A. Well, preceding—at the time Mr.—while Mr. Goddard was there Mr. Berman, I was instructed to go over and get a tray of eggs stamped with the Department of Agriculture stamp.

Q. Who gave you that instruction?

A. Mr. Berman.

Q. Do you recall how many cases of eggs he told you to obtain?

A. He told me to take one tray. I brought that tray over to the truck, and in the meantime when he told me to proceed and load up the truck, I proceeded to load them on that truck. As I walked back and forth into the truck from the platform, the back of the truck comes in flush with the platform, and naturally I stepped on the platform to get the case. Then I walked into the truck to place them. So Mr. Goodard came over to Henry Berman and put his arm around his shoulder and says, "Henry, I have some eggs over here by my office if you can use them." So Mr. Berman give me instructions to go over there and get 10 cases. So I went over and got 10 cases of eggs next to Mr. Goddard's office, and he told me to proceed and mix

(Testimony of Oscar Nystrom.)

these in with 38 cases with the Department of Agriculture stamp.

Q. How many cases of eggs did you obtain from the stack near Mr. Goddard's office?

A. 10.

Q. Did these bear the U. S. Department of Agriculture stamp?

A. No, they did not. [2246]

Q. Did they have any other stamp?

A. A large purple "P."

Mr. Hippeli: May I have U. S. Exhibits 67 and 68, please?

Q. I will show you U. S. Exhibit 68 and ask you to look at that, please. Do you observe U. S. Department of Agriculture stamp on that exhibit?

A. I do.

Q. Have you seen such a stamp before?

A. I have.

Q. Have you seen such a green Biddy egg label before? A. I have.

Q. Do you recognize that as the green Biddy egg label of Nye & Nissen?

A. That's right.

Q. Was there a label bearing the U. S. Department of Agriculture stamp represented by Exhibit 68, was such a label on any of the cases which you loaded on your truck on the occasion you have testified to? A. No.

Q. There were two lots of eggs that you were loading on your truck?

A. That's right.

(Testimony of Oscar Nystrom.)

Q. There was one lot of about 38 cases?

A. Approximately.

Q. You had one tray of cases that you brought up to your truck? A. Yes.

Q. Did you observe any labels on those cases?

A. I did.

Mr. Faulkner: The witness just testified there was no Department of Agriculture labels on these cases of eggs. When you are not satisfied with that you try and get him to change his testimony We object to it.

Mr. Pratt: He testified in the first instance that there were the Department of Agriculture stamps on all but ten cases [2247] that were over by Goddard's office. Now it is perfectly plain that the last question he answered he was confused. He has two answers that are contrary. It is certainly perfectly proper to explain a discrepancy, to get the witness to give an explanation of the situation.

Mr. Faulkner: I don't mind the witness explaining any situation, but I do object to him explaining it after counsel for the Government has explained to him in his presence——

The Court: What is before the court now?

Mr. Faulkner: My objection is, your Honor, to the present examination, upon the ground that it has been asked and answered. He has testified in relation to the labels and with relation to the stamps.

The Court: Proceed.

(Testimony of Oscar Nystrom.)

Mr. Hippeli: Q. Was that label similar to U. S. Exhibit 68? A. That's right.

Q. Did you observe any stamp on those labels?

Mr. Faulkner: Now, that is the point, your Honor.

The Witness: I seen that label——

Mr. Faulkner: They show him a label. The label shows a stamp. He says it is similar to that label, so the assumption would be at that point that he saw a label of the Department of Agriculture. They are not satisfied with that answer. They want him to change it. I submit they are bound by his answer when they propound these questions in this form.

Mr. Hippeli: He already said——

The Court: The court is prepared to rule. Let the question and the answer stand. Proceed.

Mr. Faulkner: Exception, your Honor.

Mr. Hippeli: Q. The label on the cases of eggs, the tray of eggs which you had brought out near your truck, did you observe any Department of Agriculture stamp on those labels?

A. I did.

Q. I will show you U. S. Exhibit 68 and ask you if it was a stamp similar to the Department of Agriculture stamp on that exhibit.

A. Identically the same as that.

Q. You have testified you brought out a lot of ten cases of eggs from a stack near Mr. Goddard's office.

A. Yes, that is right.

(Testimony of Oscar Nystrom.)

Q. Did you observe any label on those ten cases of eggs? A. I did.

Q. I show you U. S. Exhibit 67 and ask you if the label you observed on those ten cases is similar to that exhibit.

A. Identically the same.

Q. The label appearing on those ten cases of eggs, did you notice any stamp on it?

A. I noticed a stamp "P," that's all.

Q. Is the stamp appearing on those labels similar to the stamp "P" appearing on U. S. Exhibit 67? A. That's right.

Q. You are out near your truck, you have a tray of eggs, and you have a lot of 10 cases of eggs there with Mr. Berman present [2249] at that time and place. A. Correct.

Q. Did you receive any instructions from Mr. Berman as to the loading of your truck?

A. I received all my instruction pertaining to that load.

Q. Did you receive any instructions on this particular occasion? A. I did.

Q. Do you recall what those instructions were?

A. I do.

Q. What were they?

A. He says, he instructed me to proceed to load 38 cases and then every so often he would stop me and tell me to put one or two of the other—one or two of the ten lot into the truck with the others and then to proceed and put some more from the 38 lot on, until the truck was loaded.

(Testimony of Oscar Nystrom.)

Q. You have been a lumper for some period of time, haven't you?

A. I have been a driver, yes.

Q. As a truck driver you have been loading your truck?

A. I have loaded quite a number.

Q. On this particular occasion when you were loading cases of eggs from the 38 cases appearing on the tray and the lot of 10 cases——

Mr. Faulkner: Just a minute. There isn't any testimony in this case at all about 38 cases on a tray. A tray of eggs does not come with 38 cases.

Mr. Hippeli: Withdraw the question.

Q. On this occasion when you were loading your truck, did you notice any difference in weight between a case of eggs which [2250] bore the Department of Agriculture stamp and a case which bore merely a purple "P" on it?

Mr. Faulkner: I object to that as calling for an opinion and conclusion of the witness.

The Court: It goes to the weight of the testimony.

Mr. Faulkner: The best evidence is the weight. It is not a matter of weight of testimony. In other words, we are not bound in this case by an opinion or conclusion of a man relative to the weight of a case.

The Court: Read the question.

Mr. Faulkner: In other words, it is not a fact.

The Court: Read the question.

(Question read by reporter.)

(Testimony of Oscar Nystrom.)

Mr. Faulkner: I would like to examine the witness on his qualifications to give testimony.

The Court: Proceed.

Mr. Faulkner: And I submit the general objection.

The Court: Proceed.

Mr. Faulkner: Q. Mr. Nystrom, what was your business prior to going to the firm of Nye & Nissen?

A. I wish you would speak more clearly, as I am hard of hearing. I am practically deaf in one ear.

Mr. Faulkner: Q. I say, what was your business before you went to work for Nye & Nissen?

A. I drove beverage trucks. [2251]

Q. How much should a case of eggs weigh that are large eggs, do you know?

A. I can say approximately, but I can't say exactly.

Q. Well, approximately.

A. 47, 48 pounds up to 50.

Q. 47 or 48 pounds up to 50?

A. That's right.

Q. How often had you ever handled eggs other than the plant of Nye & Nissen?

A. Every day.

Q. Other than in their plant.

A. I have never handled eggs there before I came to Nye & Nissen.

Q. Before you came to Nye & Nissen?

A. That's right.

(Testimony of Oscar Nystrom.)

Q. Did you ever weigh any cases of eggs at the plant of Nye & Nissen?

A. No, I never have.

Q. Have you ever watched people weigh them?

A. I have.

Q. But you have not personally weighed those cases? A. No, I have not.

Q. Is that correct, during this period of time?

A. No, I have not.

Mr. Faulkner: Well, I submit, your Honor, that would be merely an opinion and conclusion and would not be binding on the defendants.

Mr. Hippeli: I believe the question before the court is not to have the witness estimate the weight of the cases, but to testify whether one was lighter than the other. I have never lifted a case of eggs, but I think I could tell that.

Mr. Faulkner: The cases weigh differently. The type of [2252] packing weighs differently. Then you come to the sensitivity of a man in weighing without the ability to test his ability, and this indicates an opinion and conclusion when the best evidence is the actual weight of the case.

The Court: I will allow the testimony and overrule the objection. The jury may accept it or disregard it. It goes to the weight of the testimony.

Mr. Faulkner: Exception.

Mr. Hippeli: Q. Mr. Nystrom, did you notice any difference between the weight of the cases which bore the Department of Agriculture stamp and the cases which bore the "P"?

(Testimony of Oscar Nystrom.)

A. It was just as easily to identify as the weight of your topcoat and the civilian——

Mr. Faulkner: I submit the witness should answer the question.

The Court: Read the question.

(Record read by the reporter.)

The Witness: Yes, I did. I noticed some difference.

Mr. Hippeli: Q. Which was the lighter?

A. The one with the large letter "P".

Q. Did you deliver the truckload of eggs?

A. I did.

Q. Did certain delivery documents accompany this truckload? A. They did.

Q. Do you recall where that delivery was made to? A. I do.

Q. Where was it?

A. It was to Berth B, Naval Supply Depot, [2253] Oakland.

Q. Did you take certain delivery documents with you to that berth? A. I did.

Q. Did you bring certain delivery documents back with you from that berth? A. I did.

Q. What did you do with the documents you brought back?

A. I brought back and presented them to Mr. Berman.

Q. Did you ever make a delivery to the steamship Josiah Royce? A. I did.

Q. Do you recall when you loaded your truck for this delivery? A. I do.

(Testimony of Oscar Nystrom.)

Q. When was that?

A. That was on the, approximately the same time, I would say, maybe a day or two later than the delivery I made to the John Muir.

Q. Where was that load made?

A. That load was—that load was made down at the Nye & Nissen plant at *Seventh* and Missouri Streets.

Q. Do you recall whether it was made in the afternoon or in the morning?

A. It was made in the morning.

Q. I am not talking about the delivery time. I am talking about the loading of the truck.

A. That was loaded the evening before.

Q. The delivery was made the following morning? A. Yes.

Q. At the time the truck was loaded do you recall who was present? A. Yes, I do. [2254]

Q. Who? A. Mr. Berman.

Q. Were you there? A. I was.

Q. What did Mr Berman do?

A. He instructed me that he had an allotment of 48 cases of eggs to be delivered.

Q. Did Mr. Berman have any delivery documents with him at that time?

A. He did. [2254-a]

Q. I will show you U. S. Exhibit No. 61 and ask you if you recognize that invoice of Nye & Nissen (handing document to witness).

A. Yes, I do.

(Testimony of Oscar Nystrom.)

Q. Does that invoice call for a delivery to the Josiah Royce? A. That is right.

Q. And to where?

A. Outer Harbor, Oakland.

Q. Did you make that delivery?

A. I made that delivery.

Q. Did you receive that invoice from Mr. Berman? A. I did.

Q. The invoice calls for 20 boxes of butter. Do you recall loading, including butter in that delivery?

A. I do.

Q. Do you recall receiving any direction as to what butter to load? A. I did.

Q. Who gave you that instruction?

A. Mr. Berman instructed me to see Mr. Goddard about the 20 cases of butter.

Q. Did anyone indicate the butter that was to be loaded?

A. Mr. Goddard indicated which butter I was to take.

Q. Where was that butter?

A. That butter was in the icebox. It was padlocked.

Q. Who went into the icebox?

A. Mr. Goddard and I.

Q. What was done in there?

A. He pointed out to me which tray of butter to take out to the truck.

Q. Who took it out? A. I did.

Q. You put it on your truck? A. I did.

Q. And you delivered it to the Josiah Royce, is that right? A. That is right. [2255]

(Testimony of Oscar Nystrom.)

Q. The invoice calls for 100 cases of Large Processed Grade AA eggs. Did you receive any instructions pertaining to these eggs?

A. Yes, I did.

Q. From whom? A. From Mr. Berman.

Q. Who was present at that time?

A. Mr. Berman and I.

Q. What did Mr. Berman say?

A. Mr. Berman instructed me in the plant which trays of eggs to take with the Department of Agriculture stamp on them.

Q. Do you recall how many cases he instructed you to take that bore the Department of Agriculture stamp? A. 50 cases.

Q. The invoice calls for 60 cases. Did you receive instructions to get any more cases of eggs?

A. He told me to see Mr. Goddard about getting 10 more cases to fulfill the allotment.

Q. Did you see Mr. Goddard? A. I did.

Q. What did Mr. Goddard say?

A. Mr. Goddard instructed me about the cases over by his office.

Q. Did you observe any labels on these cases?

A. I did.

Q. Did they bear a Department of Agriculture stamp? A. No, they did not.

Q. Did they bear a purple "P" on these labels?

A. They did.

Q. Were these 60 cases of eggs loaded on your truck? A. They were.

(Testimony of Oscar Nystrom.)

Q. Do you recall whether you delivered that load that night?

A. I delivered that load the following morning.

Q. About what time, do you know?

A. About 8:30 a.m. [2256]

Q. And you delivered, you said, to the Josiah Royce over in Oakland? A. That is right.

Q. Who was present at the berth where the Josiah Royce was docked over in Oakland?

A. The steward of the steamship Josiah Royce.

Q. What happened when you went over there?

A. I proceeded to unload my truck.

Q. Was the steward present?

A. The steward was present.

Q. Will you tell us what you did then?

A. I proceeded to—I gave the documents over to the steward and I proceeded to unload my truck, and as I was unloading the truck he stood right next to the truck and he told me he had had trouble before about eggs not being stamped, so——

Mr. Faulkner: Just a moment.

The Court: Just a moment.

Mr. Faulkner: Any conversation with the stewards would be hearsay as to the defendants, your Honor.

The Court: It may go out. Let the jury disregard it.

Mr. Hippeli: Q. Don't tell us what the steward told you. Just state what you did and what the steward may have done, not what he said.

A. All right, then. I proceeded to unload the

(Testimony of Oscar Nystrom.)

truck, and while I was unloading the truck he stopped me and he says to me——

Q. Not what he said, now. You just have to tell us what you did and what you saw him do.

A. Well, he stopped me, and he told me to give that case of eggs to me.

Mr. Faulkner: The same thing, your Honor.

The Witness: So then I proceeded to unload some more eggs and he said——

Mr. Faulkner: If your Honor please, it is simple to direct the witness——

The Court: What this witness said to the captain, steward or whoever it was may go out.

Mr. Hippeli: Q. Just say what you did, Mr. Nystrom. You will have to leave out what the steward told you to do.

The Court: What somebody told you is hearsay testimony. It is not legally admissible under the law, so do not repeat any conversation.

The Witness: Excuse me, Judge. I proceeded to unload my truck, and as I took the eggs off the end of the truck and put them onto the dock, the steward picked up the case of eggs and put it to one side, and I kept unloading my eggs and he kept putting them to one side until there was ten cases over there.

Mr. Hippeli: Q. Did those ten cases have any markings on them? A. Yes, they did.

Q. Which ten cases were they?

A. The ones with the letter "P" on them.

(Testimony of Oscar Nystrom.)

Q. Did any of those ten cases have the Agriculture stamp on them? A. No, they did not.

Q. Then you have one lot of ten cases. Did you make any separate [2258] lot of the remaining 50 cases?

A. Yes, I left the other 50 cases in one lot.

Q. And those were the 50 cases that bore the Department of Agriculture stamp?

A. That is right.

Q. Did you observe the steward do anything with respect to the lot of ten cases of eggs?

A. He proceeded to tear the tops off the cases.

Q. Did he take any eggs from the cases?

A. He did.

Q. Did you see them? A. I definitely did.

Q. What size were they?

A. I would say the size of a pigeon egg, or a little larger than my ring, here.

Mr. Faulkner: Let me see the ring. Let us describe the ring. You brought it out. Let the jury see the ring.

The Witness: I said a little larger.

Mr. Faulkner: I should like the jury to see the ring.

The Witness: It is a little larger than the ring.

Mr. Faulkner: I would like the jury to see the size of the ring. This illustrates the extravagance of a witness we are bound by. May that be passed as indicative of the size of the eggs?

(A ring was passed among the jury.)

Mr. Hippeli: May I see Exhibit 59, please?

(Testimony of Oscar Nystrom.)

Q. I will show you U. S. Exhibit No. 59, which is a box containing eggs, and ask you to examine this box, please.

A. Well, I could even say some—— [2259]

Mr. Faulkner: Just a moment.

Mr. Hippeli: Q. You have seen those eggs?

A. I have.

Q. Were the eggs contained in the ten cases of eggs which the steward opened near the Josiah Royce——

Mr. Faulkner: Go ahead, because I am going to object.

Mr. Hippeli: Q. (Continuing) ——similar in size to those contained in U. S. Exhibit No. 59?

Mr. Faulkner: Just a moment, if your Honor please. This is another instance of a witness on direct examination giving testimony that is not satisfactory to the Government, and they seek to impeach his testimony and cross-examine him on the subject. Now, he has indicated the size of an egg of about one-tenth of the size of the exhibit. They are not satisfied with his original testimony and they now want to build it up, and I submit that is not proper redirect examination.

The Court: The objection is overruled. Proceed.

Mr. Faulkner: Exception.

Mr. Hippeli: Q. Were the eggs which you saw in the ten cases of eggs by the side of the Josiah Royce similar in size to those contained in U. S. Exhibit No. 59?

A. Well, them eggs almost put them to shame.

(Testimony of Oscar Nystrom.)

Q. Were they smaller than these?

A. I should think some of them were.

Q. Were some of them about the same size as these?

A. Some of them the same size. [2260]

Q. Do you recall returning to Nye & Nissen's plant from the Josiah Royce? A. I did.

Q. Do you recall seeing any of the defendants on the occasion of your return?

A. Yes, I did.

Q. Whom did you see? A. Mr. Berman.

Q. What happened then?

A. He was very much perturbed.

Q. Did you have any conversation with Mr. Berman? A. I did.

Q. Who was present?

A. Mr. Berman and myself.

Q. ~~What~~ was said?

A. He just looked at me for a moment and he asked me what happened over there.

Mr. Hippeli: He has not said anything yet. (To the witness): Will you continue, please?

Mr. Faulkner: That is one statement you have made that is right; and the witness has been here an hour.

The Court: Q. Tell the jury what was said, if anything.

A. Mr. Berman asked me what happened over there. Well, I said, "The steward refused these ten cases of eggs—refused ten cases of eggs."

(Testimony of Oscar Nystrom.)

He said, "I know all about it. I know all about it."

I says, "Why? What happened?"

He said, "I received a phone call since then. I know all about it."

So then he instructed me to load 60 more cases of eggs on my truck.

Mr. Hippeli: Q. Did you load those 60 cases of eggs on [2261] your truck. A. I did.

Q. Did you have any further conversation with Mr. Berman pertaining to the lot of eggs that you had delivered to the Royce?

A. Is that the first allotment?

Q. The first lot. A. Yes.

Q. What was that?

A. He asked me if I didn't know how to mix them up.

Q. What did you say?

A. Well, I said I couldn't help it. He was standing right there and took the eggs as I took them off the truck. And he told me he had trouble before receiving eggs that were not stamped.

Q. What did Mr. Berman say to that?

A. Well, he never said nothing.

Q. He instructed you to deliver 60 new cases of eggs, did he? A. He did.

Q. Did he indicate the 60 cases which were to be delivered?

A. Yes, he instructed me to go to Ruby Goddard and get 60 Grade AA Large eggs to be delivered over there to replace the others.

(Testimony of Oscar Nystrom.)

Q. How did he happen to know they were large?

A. Well, he instructed me——

Mr. Faulkner: Your Honor, we object to that as calling for an opinion and conclusion.

The Court: Read the question and answer.

(The last two questions and answers were read by the reporter.) [2262]

Mr. Faulkner: How he happened to do something would call for his opinion and conclusion.

The Court: The objection is sustained. Develop the facts, whatever they may be.

Mr. Hippeli: Q. Did Mr. Goddard point out 60 cases of eggs to you? A. He did.

Q. And did you load those cases on your truck?

A. I did.

Q. Then what happened?

A. Then I proceeded back over to Berth 3, Outer Harbor, with these eggs, and when I arrived over there that afternoon the cases of eggs, the 50 cases of eggs were not there. They were already put on the boat. But the other ten cases were on the dock. So I seen the steward and I just exchanged ten of the cases. That is, I took the ones with the letter "P" on them put them back on the truck, and I left ten of the cases, of the Government stamped eggs.

Q. Then what did you do?

A. Then I proceeded back to the plant.

Q. To San Francisco?

A. So San Francisco, Seventeenth and Missouri.

(Testimony of Oscar Nystrom.)

Q. Did anyone meet you on your return to the plant? A. Mr. Berman.

Q. Was anything said at that time?

A. Yes, there was.

Q. What was said?

A. Mr. Berman was very furious. He said, [2263] "I am not paying you for taking eggs for a ride around the country."

Mr. Faulkner: We ask that that statement be stricken out as to the opinion and conclusion of the witness.

The Court: Read the question and answer.

(Record read.)

The Court: "Very furious" may go out.

Mr. Hippeli: Q. Did you observe Mr. Berman's appearance? A. Yes, I did

Q. How did he appear to be?

A. Very furious.

Q. Did you have any conversation with Mr. Berman at that time?

Mr. Faulkner: I ask that that go out again, your Honor.

Mr. Hippeli: I think the witness can testify whether the defendant was mad, or not.

The Court: There was nothing said about being mad. He may state his appearance, whatever it may be, or whatever it was.

Mr. Faulkner: I ask that the answer go out, your Honor.

The Court: It may go out.

(Testimony of Oscar Nystrom.)

Mr. Hippeli: Q. Will you just give the conversation, please?

A. Well, he was pretty mad by this time and he said, like I said a moment before, he told me, "I didn't send you over there to take them eggs for a ride around in the country. I wanted you to bring those 60 cases over there and return the others." He said, "Now I will have to have [2264] you make another trip over there."

Q. Did you deliver 60 more cases of eggs over to the Josiah Royce?

A. No, one of the other drivers happened to come back and we switched them cases. He said, "Well, I have another order here that has to go." So we just took them 50 cases what I brought back out of my truck into this truck driven by Paul Robeson, and he took them over to the Josiah Royce, and I don't know what happened thereupon.

Q. Were those 50 cases that bore the Department of Agriculture stamp? A. Yes.

Q. There were 10 cases remaining on your truck, were there not? A. That is right.

Q. Did they bear a stamp?

A. No, they did not.

Q. Did they have a purple "P" on them?

A. That is the ones I brought back.

Mr. Hippeli: I have not traced these further, your Honor, and unless you care to adjourn here I could go for about ten minutes more on this particular delivery.

(Testimony of Oscar Nystrom.)

The Court: We will take an adjournment until tomorrow morning.

Mr. Faulkner: Before your Honor adjourns, in the interest of time there are certain shipments that have been referred to by this witness, and unless we find out tonight we won't be able to check any records on them, so I will ask counsel for the Government if they will tell us what deliveries they [2265] were referring to in the beginning of this examination as deliveries to the Norton-Lilly pier, and what company was involved, so that we can have our records here for cross-examination of this witness tomorrow, if that is convenient to you.

Mr. Hippeli: We have not been able to procure the documents on the delivery of the first two transactions that the witness testified to.

Mr. Faulkner: Whom do you claim they went to?

Mr. Hippeli: Piers 34; Norton-Lilly.

Mr. Faulkner: I mean what company? They deliver thousands of cases a day, almost, and what company is involved in these transactions? If we do not know that we are not in a very good position——

The Court: The court at this time is prepared to excuse the jury. It is four o'clock. Ladies and gentlemen of the jury, keep in mind the admonition of the court, and return at ten o'clock tomorrow morning. You may be excused.

(Thereupon an adjournment was taken until tomorrow, Wednesday, March 6, 1946, at ten o'clock a.m.) [2266]

Wednesday, March 6, 1946, 9:45 o'clock a.m.

(The court and counsel for respective parties discussed in the absence of the jury the matter under consideration at the time of adjournment on Tuesday evening, March 5, 1946.)

The Court: Waive the roll call. Stipulated all the jurors are in the box. You may proceed.

Mr. Pratt: If the Court please, there is a witness, a purchasing agent of one of these shipping lines, that we agreed to bring when he got to town: Mr. Granville. I would like to call him now a little out of order, if there is no objection.

The Court: I think it would be well to conclude with the witness on the stand.

Mr. Pratt: The testimony of the witness on the stand will be quite protracted, your Honor.

The Court: If the witness to which you refer will be a short witness——

Mr. Faulkner: I have no objection.

Mr. Pratt: Mr. Granville.

JOSEPH J. GRANVILLE,

called as a witness for the Government; sworn.

The Clerk: Will you state your name?

A. Joseph Granville. [2267]

Direct Examination

Mr. Pratt: Q. Your name is Joseph J. Granville, is it not? A. Yes, sir.

Q. Mr. Granville, I believe you are purchasing agent of the Deconhill Shipping Company; that is right, is it not? A. Yes, sir.

(Testimony of Joseph J. Granville.)

Q. Is that the way you pronounce the name of the company?

A. Well, some people pronounce it that way. Some say "Decon Hill Shipping Company."

Q. In connection with your duties as purchasing agent I will ask you whether you recall issuing any purchase orders in connection with the management of the steamship Mission San Diego.

A. Yes, sir, I do.

Q. That is one of your ships, was it not?

A. That is correct, sir.

The Court: Raise your voice. Speak up so all the jurors can hear you.

Mr. Pratt: Q. I direct your attention to Exhibit 154 in evidence, which is a purchase order from the War Shipping Administration, by the Deconhill Shipping Company, General Agents, dated May 10, 1944, directed to Nye & Nissen, for delivery of butter, eggs and cheese to the Mission San Diego, and I ask if you can identify this paper.

A. Yes, sir, I can.

Q. Do you recall whether you had any communication by telephone with anybody connected with the firm of Nye & Nissen in [2268] connection with this order?

A. Yes, sir, the order was placed verbally and confirmed in writing.

Q. With whom did you have your telephone conversation, do you know?

A. I don't recall the name of the individual.

Q. Are you acquainted with any of the officers or employees of Nye & Nissen?

(Testimony of Joseph J. Granville.)

A. No, sir, I am not.

Q. This order was issued by telephone and then this is the confirming written purchase order, is that right? A. That is correct, sir.

Mr. Pratt: I think that is all.

Cross Examination

Mr. Faulkner: Q. Do you know, Mr. Granville, in connection with the issuance of this purchase order, whether or not you requested or received an egg inspection certificate from the Department of Agriculture?

A. It had always been the custom to have material delivered to a WSA vessel inspected by the Department of Agriculture.

Q. I mean did you have it inspected?

A. I don't recall, sir.

Q. Usually in the regular course of business, you receive a certificate and you pay a fee to the Department of Agriculture?

A. Correct, sir. We no doubt have a certificate in our files for that.

Mr. Pratt: We have no certificates. I think a search was made of the records of the Deconhill Shipping Company and none found. [2269]

Mr. Faulkner: Q. Did you search your records for a certificate in connection with this matter?

A. I did not, sir.

Mr. Faulkner: I think that is all, your Honor.

The Court: Any questions? Is that all from this witness?

Mr. Faulkner: That is all.

The Court: Step down.